

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1336 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 3 : YES // 4 & 5 : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

M I PATHAN

Appearance:

MR KS JHAVERI for Petitioner

MR BA VAISHNAV for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 02/05/2000

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The brief facts of the present writ petition are that the respondent no. 1 was appointed on the post of

Driver with the petitioner-Gujarat State Road Transport Corporation Limited [hereinafter referred to as, 'the Corporation']. The petitioner-Corporation relieved the respondent no.1-M.I Pathan [hereinafter referred to as, 'the respondent workman'] on account of unfitness i.e., permanent weakness of eye-sight. The said decision was taken after having a complete check-up by the Civil Surgeon, based on unfitness certificate issued by the said Civil Surgeon. Now, since the respondent-workman was relieved from service of the petitioner-Corporation on account of unfitness, the son of the respondent workman [the respondent no. 2 herein] applied for employment on the post of Helper Grade-IV on the compassionate grounds. The concerned officer appointed verified the authenticity of the application submitted by the respondent no. 2 and thereafter submitted his report to the petitioner-Corporation. Thereafter, petitioner Corporation rejected the application of the respondent no. 2 on the ground that the monthly income of the respondents was exceeding Rs. 1,000/=-, pursuant to the Notification issued by the Government. Now, on account of the rejection of application submitted by the respondent no. 2 for the post of Helper Grade-IV, the respondents made a complaint to the Labour Commissioner, Ahmedabad under Sec. 10 of the Industrial Disputes Act, 1947, which was subsequently referred to the Industrial Tribunal and numbered as Reference (IT) No. 52 of 1995. The terms of reference is that M.I Pathan who was working at Palanpur Division was declared unfit by the Civil Surgeon and his service was terminated on 8th June, 1990, therefore, in view of Item No. 30 of the Settlement dated 21st December, 1989, whether the son Ayub M Pathan is entitled to compassionate employment in pursuance to the settlement or not or whether he is entitled to financial loss caused to him or not? Before the Industrial Tribunal, the statement of claim was filed by the workman concerned, and thereafter, written statement was filed by the Corporation vide Exh. 14. Thereafter, the respondent workman has produced certain documents vide Exh. 8 from page no. 9 to 13. Shri Ayub Pathan was examined vide Exh. 18. The petitioner Corporation has produced a copy of settlement Item No. 30 Exh. 16 of the Settlement dated 21st December, 1989 and also produced GSO No. 877/88 Exh. 17 and vide Exh. 20 Pravin C. Joshi was examined by the petitioner-Corporation. The Industrial Tribunal has examined the relevant provisions of the Settlement Item No. 30 dated 21st December, 1989 and considered the provisions made therein. After considering the decisions of this Court as well as Apex Court which were cited before it, the Industrial Tribunal has come to the

conclusion that the settlement gives right to the dependents of the S.T employee who is declared unfit to raise industrial dispute, if his right under the settlement has been denied by the Corporation. Therefore, the Industrial Tribunal has come to the conclusion that dependent of the workman concerned has a right to raise industrial dispute, and therefore, the industrial dispute has been rightly raised and referred for adjudication. Therefore, there is no illegality in referring the matter before the Tribunal by the Union. However, the Tribunal has observed that this contention has not been raised by the petitioner Corporation in the written statement but at the time of arguments, the said contention has been raised by the Corporation. Mr. Ayub Pathan who was examined vide Exh 18 has deposed before the Industrial Tribunal that he is having income of Rs. 300 per month and he does not have any pangalla shop or any other income. The Corporation has not produced any proof of Tea-Lorry which was in the ownership of the respondent workman. Even the report which has been submitted by the witness of the petitioner Corporation Pravinchandra Joshi has not been produced on record. Therefore, ultimately the Tribunal has come to the conclusion that the respondent no. 2 Ayub M. Pathan does not have income of more than Rs. 300, and therefore, considering the relevant provisions of GSO No. 877 of 1988 dated 7th November, 1988, the Tribunal has come to the conclusion that respondent workman does not have any income of more than Rs. 1000/= and the said fact has not been dislodged by the petitioner Corporation before the Industrial Tribunal, and therefore, considering the provisions of the settlement Item NO. 30 dated 21st December, 1989, the Industrial Tribunal has come to the conclusion that the respondent no. 2 Ayub Pathan is entitled to compassionate employment. Learned advocate Mr. Vaishnav submitted that reasoning given by the petitioner-Corporation for rejecting the application for compassionate appointment are wrong and erroneous because before the Tribunal no income source has been proved by the petitioner Corporation, which is beyond the GSO in question, and therefore, after considering the oral as well as documentary evidence, the Tribunal has come to the conclusion that the dependant of Shri M.I Pathan ie., Ayub M Pathan is entitled to compassionate employment on the basis of his educational qualification in either Class-III or Class-IV category, and therefore, accordingly, the Tribunal has directed the petitioner Corporation to give compassionate appointment to Ayub Pathan according to his educational qualification by an Award dated 13th September, 1999.

3. I had perused the entire Award and gone through Item No. 30 of the Settlement. Mr. Vaishnav pointed out that there is one G.S.O of the year 1992 wherein the said ceiling of Rs. 1,000/= has been enhanced to Rs. 1,500/=-, however, Mr. Vaishnav submitted that considering the undisputed right that in case if any employee is declared 'unfit' during the course of his employment and he is unable to perform his duty on the post held and his services are terminated due to the said reason, in that circumstances, one dependant of such employee who is declared 'unfit' is entitled to compassionate appointment irrespective of any ceiling of income. In the present matter, the concerned workman's son Shri Ayub Pathan has submitted his application inter alia as per Item No. 30 of the Settlement, and therefore, the petitioner Corporation which has rejected the application of Ayub Pathan on wrong assumptions and illegally which is contrary to Item No. 30 of the Settlement dated 21st December, 1998, and therefore, the Tribunal has rightly considered each and every aspect of the matter, and before the Tribunal, the income of Ayub Pathan was also not proved to be beyond the prescribed ceiling, and therefore, according to Mr. Vaishnav the Industrial Tribunal has not committed any error either in law or on facts which requires any interference at the hands of this Court in exercise of powers under Art. 226 & 227 of the Constitution of India.

4. Mr. Zaveri, learned advocate appearing for the petitioner Corporation, on the other hand, submitted that the Tribunal ought not to have granted compassionate appointment to the dependent of the concerned workman, however, at the most, the Tribunal could have given directions for considering the matter in light of the terms of settlement.

5. Now, considering the submissions of learned advocate Mr. Zaveri that terms of reference which give power to the Industrial Tribunal to direct petitioner Corporation to appoint the dependent as per the Settlement Item No. 30 dated 21st December, 1989, the Tribunal derives jurisdiction in terms of the reference and Tribunal is having wide jurisdiction under the provisions of Industrial Disputes Act, 1947 and even Tribunal can create a new contract or modify the existing one. The Tribunal is not bound by service rules of the Corporation and the Tribunal has to function within the sphere of the provisions of the Industrial Disputes Act. The view taken by this Court in the matter of Re. Kalol Municipality, reported in 1993 (2) GLR 997 that the Industrial Tribunal has powers to pass award even

granting confirmation and permanency, irrespective of the rules of the concerned authority. The Division Bench of this Court has considered earlier decisions rendered by this Court in the matter of Natvarlal V. Patel v. Municipality of Vadodara, (1965) GLR (VI) 189 and of Apex Court in the matter of Baroda Borough Municipality v. Its Workmen, reported in AIR (1957) SC 110.

6. In view of the aforesaid authorities, the Tribunal has wide powers and it derives jurisdiction in terms of the reference, and therefore, the Tribunal has rightly passed an order directing the petitioner Corporation to appoint Shri Ayub Pathan, considering his educational qualification, either in class-III or Class-IV cadre. Therefore, the Tribunal while granting such a relief has not committed any error, and therefore, according to my opinion, the Tribunal while passing the said Award has not committed any error in law. Mr. Zaveri is not able to point any error of law which requires any interference at the hands of this Court in exercise of powers under Art. 226 and 227 of the Constitution. Moreover, this Court having very limited jurisdiction under Arts. 226 & 227 of the Constitution cannot act as an appellate authority or cannot reappreciate the evidence led before the Tribunal, in view of the two decisions of Apex Court in the matters of Ahmedabad Municipal Corporation v. Virendrakumar Jayantibhai Patel, reported in 1998 (I) GLR 17 and in matter of Mrs. Reu Drego v. Lalchand Soni, etc. AIR (1998) SCW 1840 and of this Court in the matter of Chhagan Ranchhod Kulkavva v. General Manager, Western Railways, Bombay, 1998 (1) GLH 461. Therefore, according to my opinion, the present petition is required to be dismissed. According, it is dismissed. There shall be no order as to costs. In view of the fact that this petition is dismissed, therefore, in the interest of justice, the petitioner Corporation is directed to implement the Award passed by the Industrial Tribunal in Reference (IT) No. 52 of 1995 dated 13th September, 1999 within a period of eight weeks from the date of receipt of copy of this judgment.

[H.K Rathod, J.]

Prakash*